

AGENDA
TOWN OF INDIALANTIC BOARD OF ADJUSTMENT
Council Chamber, 216 Fifth Avenue, Indialantic, FL 32903
Monday, April 24, 2023 AT 5:30 P.M.

A. Call to Order:

David A Justice	Chair
Stephen Baughn	Vice Chair
Safvat Kalaghchy	Member
Michael Hill	Member
Eileen Mullen	Member
Guy Newman	1 st Alternate
(Vacant)	2 nd Alternate

B. Approval of Prior Meeting Minutes:

Minutes – March 8, 2023

C. Variance Request:

Site address: 340 Oakland Avenue
Zoning: R-1-A
Applicant/Owner: Wendy and David Cable

- 1. Code Section 113-222 – Fences, walls (C) Setbacks (2)** - Requesting a variance of 9' from the required 10' setback to allow an installed fence to remain located 1' from the rear property line.

D. Adjournment:

Notice: Pursuant to section 286.0105, Florida Statutes, the town hereby advises the public that if a person decides to appeal any decision made by this board with respect to any matter considered at its meeting or hearing, he will need a record of the proceedings, and may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the town for the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

Americans with Disabilities Act: Persons planning to attend the meeting who need special assistance must notify the office of the town clerk at 321-723-2242 no later than 48 hours prior to the meeting.

Meeting Minutes
TOWN OF INDIALANTIC BOARD OF ADJUSTMENT
Council Chamber, 216 Fifth Avenue, Indialantic, FL 32903
Wednesday, March 8, 2023 AT 5:30 P.M.

A. Call to Order:

A regular meeting of the Board of Adjustment was called to order by Chair Justice at 5:28 p.m. followed by the Pledge of Allegiance. The following members were present:

David A Justice Chair
Safvat Kalaghchy Member
Eileen Mullen Member

Absent:

Stephen Baughn, Vice Chair
Michael Hill, Member

Also attending:

Michael Casey, Town Manager
Paul Gougelman, Town Attorney
Cliff Stokes, Building Official

B. Approval of Prior Meeting Minutes:

Minutes – December 7, 2022

Motion by Member Kalaghchy, seconded by Member Mullen, and vote unanimous to approve the meeting minutes. Motion carried 3-0.

C. Variance Request:

Site address: 500 S. Palm Avenue
Zoning: R-1-A
Applicant/Owner: Evan and Kelly Donahue

- 1. Code Section 113-238 (d) Swimming pools** -- Requesting a variance of 3' 9" from the required 10' setback to allow the water's edge to be located 6' 3" from the west (rear yard) property line.

Town Manager Casey advised that the applicant revised the plan [which was originally presented at the Dec. 7, 2022 meeting]. This plan leaves the fence where it is currently located.

Chair Justice noted that at the last meeting, the applicant requested multiple variances to accommodate a swimming pool. He invited the applicant to speak.

Evan Donahue, 500 S. Palm Avenue, described the proposed project.

A board member inquired if any issues with easements were resolved; Mr. Casey advised there were no easement or right-of-way issues with this revised plan as the fence complies with the town's setback requirement.

Mr. Donahue answered the board member's questions regarding the powerline and pool configuration.

Public Comments:

It was noted that one written comment was submitted by neighbors John and Simi Brady; printed copies were provided on the dais.

Motion by Member Mullen, seconded by Member Kalaghchy, to approve the variance. Motion carried 3-0.

D. Board of Adjustment regular meeting schedule:

Town Clerk Raddon advised that 5:30 p.m. works for all members and she recommended the Board of Adjustment meeting time be moved to the third Wednesday of each month, to accommodate the earlier town council meeting time which will be considered for adoption later this evening by the town council. Town Attorney Gougelman advised that he had a schedule conflict and suggested the fourth Monday.

After brief discussion, it was the consensus of the board that meetings would be held on the fourth Monday of the month, at 5:30 p.m.

E. Adjournment:

There being no further discussion, the meeting was adjourned at 5:41 p.m.

David Justice, Chair

Attested by:

Rebekah Raddon, CMC, Town Clerk



Application for Zoning Variance

Chapter 113 ZONING. Article II, Div. 4. Sec. 113-117 Authority:

(a) The board of adjustment may grant variances in specific cases to vary or alter the strict application of any of the requirements of this chapter, whereby such application of a particular requirement would result in a practical difficulty or an unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved.

(b) To obtain a variance the applicant must demonstrate to the board of adjustment that:

- (1) A practical difficulty or an unnecessary hardship is caused by the literal application and enforcement of the zoning code provision from which a variance is sought;
- (2) The granting of the variance will not authorize a use prohibited, or result in a use variance, in the district in which the property is located;
- (3) The preponderance of evidence presented at the variance hearing does not demonstrate that the granting of the variance will seriously impair the use of adjacent property, or significantly reduce the value of adjacent property, regardless of the zoning district in which the adjacent property is located;
- (4) The need for the variance is made necessary by the unique character of the property;
- (5) The need for the variance is not caused in any way by the owner or occupant of the property upon which the variance is sought;
- (6) That the request for a variance is not solely based on an economic disadvantage to the owner or occupant of the property upon which the variance is sought, because an economic disadvantage to an applicant does not constitute a hardship or practical difficulty sufficient to warrant the granting of a variance; and
- (7) That the request for a variance is not solely based on a need or desire of the owner or occupant of the property upon which the variance is sought to be obtained to gain an economic benefit, because an economic advantage to an applicant does not constitute a hardship or practical difficulty sufficient to warrant the granting of a variance.

(c) In determining whether to grant a variance the board of adjustment may consider the goals, objectives and policies of the comprehensive plan.

(d) In granting a variance, the board of adjustment may prescribe any conditions that it deems necessary or desirable in the furtherance of the purpose of this chapter.

(e) If a variance is granted with the effect being that a building permit is required, the building permit must be obtained within twenty-four (24) months of the approval date, after that time, the variance is void. If a permit is issued and that permit expires then the variance is also terminated, or expires, with the permit. (Ord. No. 11-13, 3, 7-27-11; Ord. No. 17-08, 2, 4/12/17) WC: JLC applicant initial.

1. Applicant states that the property is located at:

Lot(s) 3 & 4 Block 51

Street Address 340 Oakland Ave, Indialantic

2. Applicant's contact information:

Name: Wendy & David Cable Phone: 321-615-0099

Address: 340 Oakland Ave, Indialantic Email: d.cable@hotmail.com

3. Property Owner (if other than applicant): N/A

Property Owner Address: N/A

4. The relationship of the applicant to the property is:

OWNER: X ATTORNEY/AGENT*: _____ TENANT*: _____

*Owner authorization required.

5. The property is zoned (Circle one) R-1-A; R-1-B; R-2; R-3; R-P; C; C-1; C-2; SC; CH; T

6. The requested variance(s) is for the following non-conformities of the Indialantic Code:

Code Section	Explain Non-conformity (variance requested)
a. <u>113-222/2e</u> <u>Fences; walls</u>	<u>practical difficulty variance of 19' resulting in a 11' setback from the required 10' right of way</u>
b. _____	_____

Attach additional pages as necessary

7. Current Property Survey and Site Plan for proposed variance are attached to this application

WC: JLC applicant initial

8. Site plans are the same as submitted to the Zoning Board, if applicable: YES X NO _____ N/A _____
(can't know if ZB was involved, Building official approved fence permit)

9. Describe the **Practical Difficulty** or **Unnecessary Hardship** which will be imposed if the variance is not granted (see definitions, pg. 3). Attach additional pages as necessary:

see attached letter

Chapter 113 ZONING. Article I, Sec. 113-4 Definitions:

Practical difficulty.

In the case of a variance, a practical difficulty is a standard which is similar to but less rigorous than the unnecessary hardship standard. It is a non-self created characteristic of the property. The standard asks whether a literal enforcement of a zoning regulation will create a practical difficulty in the use of the parcel of land for the purpose or in the manner for which it is zoned. Some of the factors that may be considered in determining whether a practical difficulty exists include: (i) how substantial the variance is in relation to the requirement sought to be varied; (ii) whether a substantial change will be produced in the character of the neighborhood; (iii) whether the difficulty can be obviated by some method feasible for the applicant to pursue other than by a variance; and (iv) whether, in view of the manner in which the difficulty arose, the interest of justice will be served by allowing the variance. Finding that factors (i) (that the variance requested is not substantial); (ii) (that a substantial change in the character of the neighborhood will not occur if the variance is granted); (iii) (that the difficulty occurring can only be obviated by grant of the variance); and (iv) (that the interest of justice will be served by granting of the variance), are all factors in support of the variance.

Unnecessary hardship.

In the case of a variance, an unnecessary hardship is a standard which is similar to but much more rigorous than the practical difficulty standard. The unnecessary hardship standard is a very restrictive standard. It is a non-self created characteristic of the property in question which renders it virtually impossible to use the land for the purpose or in the manner for which it is zoned. The standard asks whether a literal enforcement of a zoning regulation will create an unnecessary hardship which makes it virtually impossible to use the land for the purpose for which it is zoned.

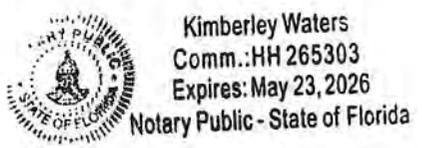
A nonrefundable fee of \$500.00 is required at the time the application is filed. Application does not guarantee variance will be granted.

I hereby agree to the payment of the fee as prescribed by the Indialantic Code of Ordinances. I hereby depose and say that all the above statements are true and correct to the best of my knowledge.

Signature of applicant Wendy Cable: D. Cable Date 2/28/2023

The foregoing instrument was sworn to (or affirmed), subscribed, and acknowledged before me by means of physical presence or online notarization, this 28th day of February, 2023, by Wendy Cable David Cable, who is personally known to me or has produced N/A as identification.

NOTARY: Kimberley Waters Commission expires: 5/23/2026
Kimberley Waters



FOR OFFICE USE ONLY

Application checked and accepted by Building Official: _____

Date _____

ACTION BY BOARD OF ADJUSTMENT:

Approved _____ Disapproved _____ Date _____

Board of Adjustment Chairman

Board of Adjustment Secretary

February 28, 2023

RE: 340 Oakland Ave fence variance request

Dear Indialantic Board of Adjusters:

Adhering to the literal application of Ordinance Sec 113-222/2e. Fences; Walls would create a practical difficulty for us in that it would place 10' x 104.9' of our land behind the fence where it could not be seen, used or enjoyed by us. Yet, at the same time, we would still be required to maintain that parcel and it would also be included in the calculation of our property tax – even though we wouldn't be able to see, use or enjoy it.

For this reason, we respectfully ask that the Board of Adjusters grant us a practical difficulty variance of 9', resulting in a 1' setback from the required 10' right of way. Please note that, even with the variance, the right of way between our fence and Watson Ave would still be over 16', which is substantial.

Further, granting us this practical difficulty variance will not result in unauthorized use of the land. It will not reduce the value of adjacent property or substantially change the character of the neighborhood. Our property being one that has both front and back yards abutting a street, which is unique, is what requires this variance request and granting the variance is the only way to obviate the practical difficulty. We are not seeking this variance for any economic gain. Rather, we simply want to be able to enjoy the full scope of our property/lot.

In closing, please note that the fence is already built, as you can see in the attached pictures. This was a good faith act on our part based on the fact that the Indialantic Building official approved our fence permit without requiring a variance beforehand. With approved permit in hand, and no variance requested by the city in order to receive the approved permit, we commenced construction. And as noted in the variance request form, the detailed drawing of the property and new fence positioning was included in the permit request. We didn't question that a variance was not requested because our lot line actually touches the right of way, not the street, and the ordinance does not read "...abutting the street or the right of way...". It reads simply "...abutting the street..."

Thank you for your time and consideration. We are hopeful that our variance request will be granted.

Sincerely,

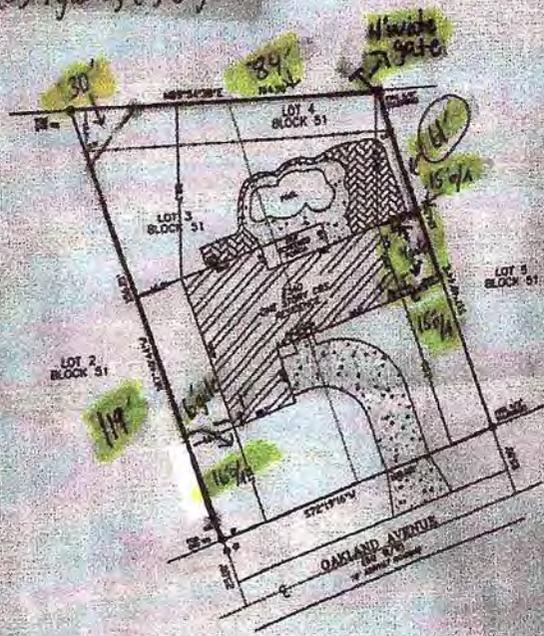


Wendy & David Cable



MAP OF BOUNDARY SURVEY PREPARED FOR DAVE R. CASE AND WENDY E. CASE

340' of 6' wood stockade fence
with (3) 4' gates, (1) 6' gate



<p>NOTICE</p> <p>THIS SURVEY WAS MADE IN ACCORDANCE WITH THE SURVEYING ACT, R.S. 24:1-1, AND THE RULES AND REGULATIONS OF THE BOARD OF SURVEYING AND MAPPING, STATE OF LOUISIANA.</p> <p>THE SURVEY WAS MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT COMES UP TO THE REQUIREMENTS OF THE ACT AND RULES.</p> <p>IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT NEW ORLEANS, LOUISIANA, THIS 11th DAY OF JANUARY, 2011.</p> <p>DAVE R. CASE SURVEYOR</p>	<p>PROPERTY OWNERS</p> <p>DAVE R. CASE WENDY E. CASE</p>	<p>LEGAL DESCRIPTION</p> <p>LOT 2, LOT 3, LOT 4, LOT 5, BLOCK 51, SUBDIVISION OF LOT 1, PARCEL 10, MAP NO. 100-100, PLAT OF THE BOARD OF SURVEYING AND MAPPING, STATE OF LOUISIANA, 1988.</p>
<p>SURVEYOR'S CERTIFICATE</p> <p>11.1.2011</p>	<p>SCALE</p> <p>1" = 20'</p>	<p>KNOW IT NOW, INC.</p> <p>PROFESSIONAL SURVEYING AND MAPPING</p> <p>1000 PINE BLVD., SUITE 100 NEW ORLEANS, LA 70119 PHONE: 504-586-7776 FAX: 504-586-7777</p>









326 Oakland Ave



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Written public comments

Rebekah Raddon

From: "John DiGioia" <pjd4ever402@gmail.com>
Date: Monday, April 10, 2023 4:34 PM
To: <rraddon@indialantic.com>
Subject: 216 Fifth Ave 32903

John and Pam DiGioia
440 Watson Drive
Indialantic Florida 32903

WE have no objections to variance at 340 Oakland Ave

If you have any questions please feel free to call.

TY

John D
224-518-6462

Rebekah Raddon

From: <tspinnick@yahoo.com>
Date: Saturday, April 8, 2023 11:42 AM
To: <rraddon@indialantic.com>
Subject: 340 Oakland

To whom it may concern,

There are certainly no concerns associated with the Cables' request for variance. They are improving the look and utilization of their property.

As neighbors, we support their efforts to build a comfortable and welcoming home, both inside and out.

Kind regards,

Taylor Stallings-Pinnick
326 Oakland Ave